

**In the
Indiana Supreme Court**



IN RE:)	Supreme Court No. 49S00-1111-SJ-667
)	
CENTER TOWNSHIP OF MARION)	
COUNTY SMALL CLAIMS COURT)	Case No. 49K01-1111-SC10887
ORDER FOR MANDATE and)	
MANDATE OF FUNDS)	in the Marion County Center Township
Small Claims Court)	

ORDER APPOINTING SPECIAL JUDGE

On November 14, 2011, the Honorable Michelle Smith Scott, Judge of the Center Township of Marion County Small Claims Court, issued an Order of Mandate and Mandate of Funds. This order required the Center Township Trustee, Mr. Eugene W. Akers to show cause why the Center Township of Marion County Small Claims Court should not:

1. remain located in the City-County Building in Indianapolis;
2. be appropriated funds to provide its clerks with a 5% increase in salary;
3. be provided two additional full-time clerks; and
4. be appropriated funds to purchase space-efficient furniture and reconfigure space made available in the City-County Building.

On November 22, the Center Township Trustee filed with this Court his Motion to Dismiss and Opposition of Order for Mandate and Mandate of Funds.

Each Justice has had the opportunity to review the Trustee's Motion and the Judge's Order, and has discussed the matter at Court Conference. An overriding issue presented in this matter is the fundamental question of access to justice. All mandates, some more than others, impact upon access to justice. One of the issues presented here, the location of the Center Township of Marion County Small Claims Court, may have a substantial impact on access to justice. As such a prompt and full hearing of the competing interests is necessary.

The Court finds that the procedures set out in Trial Rule 60.5 are designed to provide an immediate, expeditious and simple method for resolving and reviewing intra-county disagreements about courts and court funding. *In the Matter of Assignment of Courtrooms, Judges Offices, and other Court Facilities of the St. Joseph Superior Court*, 715 N.E.2d 372 (Ind. 1999). The use of traditional litigation, as suggested by the Trustee in his Motion to Dismiss, is typically slower, more complex and may necessitate the use of other remedies to maintain the status quo until the litigation is resolved. Proceeding under Trial Rule 60.5, is advantageous to the Judge, the Trustee and the public. The Court therefore finds that the Trustee's Motion to Dismiss should be denied.

IT IS, THEREFORE, ORDERED that the Trustee's Motion to Dismiss is **DENIED**.

Having denied the Trustee's Motion to Dismiss, the Court, being duly advised, now finds that a special judge should be appointed to hear this matter pursuant to Ind. Trial Rule 60.5(B).

IT IS, FURTHER ORDERED that pursuant to T. R. 60.5(B), Mr. Charles L. Berger, an attorney who regularly practices in Vanderburgh County, Indiana, is appointed to hear this matter, which shall be heard in the Center Township of Marion County Small Claims Court. Pursuant to Ind. Trial Rule 79(K) an oath of office is required of Mr. Berger.

The Clerk of this Court is directed to forward notice of this Order to the Hon. Michelle Smith Scott, Center Township Small Claims Court, 200 East Washington Street, #G 5, Indianapolis, IN 46204; Mr. Eugene Akers, Center Township Trustee, 863 Massachusetts Avenue, Indianapolis, IN 46204; Mr. Charles L. Berger, Berger & Berger, 313 Main Street, Evansville, IN 47708; Karl L. Mulvaney, Bingham McHale LLP, 10 West Market Street, 2700 Market Tower, Indianapolis, IN 46204-4900; Nana Quay-Smith, Bingham McHale LLP, 10 West Market Street, 2700 Market Tower, Indianapolis, IN 46204-4900; Nathaniel Lee, Lee Cossell Kuehn Crowley & Turner, LLP, 127 East Michigan Street, Indianapolis, IN 46204; to the Clerk of the Center Township of Marion County Small Claims Court; and to the Division of State Court Administration. The Clerk of this Court is further directed to post this Order on the Court's website.

The Clerk of the Center Township of Marion County Small Claims Court is directed to forward notice of this Order to all parties of record in the case below.

DONE at Indianapolis, Indiana, this 9th day of December, 2011.

Randall T. Shepard
Randall T. Shepard
Chief Justice of Indiana

All Justices concur.